

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MOISES BERNON</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 213,799
<b>CRANMER GRASS FARMS, INC</b>	)	
Respondent	)	
AND	)	
	)	
<b>KANSAS EMPLOYERS WORKERS COMPENSATION FUND</b>	)	
Insurance Carrier	)	

**ORDER**

The respondent requested review of the preliminary hearing Order dated October 22, 1996, entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

Respondent asked the Appeals Board to review the issue whether claimant sustained personal injury by accident arising out of and in the course of employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Claimant allegedly injured his back on May 14, 1996, while helping remove pallets of turf grass from a trailer. Both claimant and a former coworker testified how the accident

occurred. Comparing claimant's testimony to the medical records presented at preliminary hearing, claimant's description of the accident has been consistent.

The Administrative Law Judge found claimant a credible witness and granted the request for benefits. Because the Administrative Law Judge was in the enviable position of personally observing the witnesses presented at the preliminary hearing and assessing their demeanor, in this instance the Appeals Board gives some deference to the Judge's opinion regarding claimant's credibility. Therefore, for purposes of preliminary hearing, the Appeals Board finds that claimant has established it is more probably true than not that claimant injured his back while working for the respondent as alleged on May 14, 1996, and claimant is, therefore, entitled to workers compensation benefits for that accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated October 22, 1996, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: Diane F. Barger, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director